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12-13-101. **Definitions**

As used in this article, unless the context otherwise requires:

- (1) "Aged person" means any person sixty-two years of age or older.
- (1.5) "Board" means the financial services board created in section 11-44-101.6, C.R.S.
- (2) "Commissioner" means the state commissioner of financial services, serving in accordance with section 11-44-102, C.R.S.
- (3) "Entrance fee" means the total of any initial or deferred transfer to or for the benefit of a provider of a sum of money or other property made or promised to be made as full or partial consideration for the acceptance or maintenance of a specified individual as a resident in a facility.
- (4) "Facility" means the place in which a provider undertakes to provide life care to a resident.
- (5) "Life care" means care provided, pursuant to a life care contract, for the life of an aged person, including but not limited to services such as health care, medical services, board, lodging, or other necessities.
- (6) "Life care contract" means a written contract to provide life care to a person for the duration of such person's life conditioned upon the transfer of an entrance fee to the provider of such services in addition to or in lieu of the payment of regular periodic charges for the care and services involved. Any life care contract payable to or for the provider in four or more installments shall be subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S.
- (7) "Living unit" means a room, apartment, or other area within a facility set aside for the exclusive use or control of one or more identified residents.
- (8) "Person" means all corporations, associations, partnerships, or individuals, including fraternal or benevolent orders or societies.
- (9) "Provider" means a person who undertakes to provide services in a facility pursuant to a life care contract.
- (10) "Resident" means any person entitled pursuant to a life care contract to receive life care in a facility.
- (11) "Third-party service providers" means any person, other than a provider, who is the holder of a management contract with a provider or who contracts with a provider to provide life care services to residents.

HISTORY: Source: L. 81: Entire article R&RE, p. 678, § 1, effective July 1.L. 92: (2), (6), (9), and (11) amended, p. 1608, § 153, effective May 20.L. 99: (1.5) added, p. 1015, § 9, effective August 4.

Cross references: For disposition of moneys collected under this title, see § § 24-35-101 and 24-36-103; for practicing a profession or operating a business without a license, see § § 12-51-106 and 16-13-306; for rule-making procedures and license suspension and revocation procedures by state agencies, see article 4 of title 24; for the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of registrations, see § 24-34-102 (7) and (8); for an alternative disciplinary action for persons licensed, registered, or certified pursuant to this title, see § 24-34-106.

Editor's note: This article was numbered as article 11 of chapter 91, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject

matter. For amendments to this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Editor's note: This section is similar to former § 12-13-101 as it existed prior to 1981.

12-13-102. Certificate of authority required - application. (Repealed)

HISTORY: Source: L. 81: Entire article R&RE, p. 679, § 1, effective July 1.L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

Editor's note: This section was similar to former § 12-13-104 as it existed prior to 1981.

12-13-103. Issuance, denial, suspension, and revocation of certificate of authority. (Repealed)

HISTORY: Source: L. 81: Entire article R&RE, p. 683, § 1, effective July 1.L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

Editor's note: This section was similar to former § 12-13-105 as it existed prior to 1981.

12-13-104. Escrow account for entrance fees

- (1) Each provider shall establish an escrow account which provides that all of any entrance fee received by the provider prior to the date the resident is permitted to occupy his or her living unit in the facility be placed in escrow with a bank, trust company, or other licensed corporate escrow agent located in Colorado and approved by the commissioner, subject to the condition that such funds may be released only as follows:
- (a) If the entrance fee applies to a living unit which has been previously occupied in the facility, the entrance fee shall be released to the provider at such time as the living unit becomes available for occupancy by the new resident and is in compliance with local government regulations applicable to living units, as certified by the provider.
- (b) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be released to the provider at such time as the commissioner is satisfied that all of the following conditions exist:
- (I) Construction or purchase of the facility has been substantially completed, and an occupancy permit covering the living unit has been issued by the local government having authority to issue such permits;
- (II) A commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds submitted by the provider and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied;
- (III) Aggregate entrance fees received or receivable by the provider pursuant to binding life care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing, equipping, and furnishing, or purchasing the facility and not less than ninety percent of the funds estimated in the statement of anticipated source and application of funds submitted by the provider to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to life care contracts.
- (2) If the funds in an escrow account required to be established under subsection (1) of this section are not released within such time as provided by rules and regulations issued by the commissioner, then such funds shall be returned by the escrow agent to the persons who had made payment to the provider.

- (3) An entrance fee held in escrow may be returned by the escrow agent to the person or persons who had made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that such person is entitled to a refund of the entrance fee.
- (4) Nothing in this section shall be interpreted as requiring the escrow of any nonrefundable application fee, designated as such in the life care contract received by the provider from a prospective resident.

HISTORY: Source: L. 81: Entire article R&RE, p. 683, § 1, effective July 1.L. 92: Entire section amended, p. 1608, § 154, effective May 20.

12-13-105. Withdrawal or dismissal of person - refund

- (1) If the agreement permits withdrawal or dismissal of the resident from the life care institution prior to the expiration of the agreement, with or without cause, an amount equal to the difference between the amount paid in and the amount used for the care of the resident during the time he remained in the institution, based upon the per capita cost to the institution as determined in a manner acceptable to the commissioner, shall be refunded to the resident; but in cases where a consideration greater than the minimum charge has been paid for accommodations above standard, a sum equal to the difference between the amount paid in and the ratio of the amount paid to the minimum consideration for standard accommodations times the current per capita cost to the institution applied to the period the resident remained in the institution shall be refunded to the resident. If the per capita cost to the institution during the period cannot be established otherwise, the cost during the period shall be deemed to be the cost at the time of the withdrawal or dismissal. For refund purposes "cost" shall include a reasonable profit to the provider.
- (2) If the provider is an organization described in section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and exempt from income taxation under section 501 (a) of the federal "Internal Revenue Code of 1986", as amended, it shall be entitled to make refund according to a schedule provided in its agreement with the resident so long as such schedule provides for amortization of the amount paid by such resident over a period of not less than sixty months or over the life expectancy of the resident if such expectancy is less than sixty months. In such case, the refund may be delayed for a reasonable period thereafter until the securing by the provider of a substitute fee from another resident or prospective resident. The provider may also deduct from any such refund amounts due it from the resident for damage done or for any other legitimate offsetting item.

HISTORY: Source: L. 81: Entire article R&RE, p. 684, § 1, effective July 1.L. 92: Entire section amended, p. 1609, § 155, effective May 20.

Editor's note: This section is similar to former § 12-13-108 as it existed prior to 1981.

12-13-106. Recording of lien by commissioner

- (1) The commissioner shall record with the county clerk and recorder of any county a notice of lien on behalf of all residents who enter into life care contracts with a provider to secure performance of the provider's obligations to residents pursuant to life care contracts. All reasonable costs of recording such lien shall be paid by the provider.
- (2) From the time of such recording, there exists a lien for an amount equal to the reasonable value of services to be performed under a life care contract in favor of each resident on the land and improvements owned by the provider, not exempt from execution, which are listed in the notice of lien filed pursuant to subsection (3) of this section and which are located in the county in which the notice of lien is recorded.
- (3) The lien shall be perfected by the commissioner by executing by affidavit the notice and claim of lien, which shall contain:
- (a) The legal description of the lands and improvements to be charged with a lien;
- (b) The name of the owner of the property affected;
- (c) A statement providing that the lien has been filed by the commissioner pursuant to this section.
- (4) The lien may be foreclosed by civil action.

- (5) Any number of persons claiming liens against the same property pursuant to this section may join in the same action. If separate actions are commenced, the court may consolidate such actions. The court shall, as part of the costs, allow reasonable attorney fees for each claimant who is a party to the action.
- (6) In a civil action filed pursuant to this section, the judgment shall be given in favor of each resident having a lien who has joined in the foreclosure action for the amount equal to the reasonable value of services to be performed under a life care contract in favor of each resident. The court shall order the sheriff to sell any property subject to the lien at the time judgment is given, in the same manner as real and personal property is sold on execution. The lien for the reasonable value of services to be performed under a life care contract shall be on equal footing with claims of other residents. If a sale is ordered and the property sold and the proceeds of the sale are not sufficient to discharge all liens of residents against the property, the proceeds shall be prorated among the respective residents
- (7) The liens provided for in this section are preferred to all liens, mortgages, or other encumbrances upon the property attaching subsequently to the time the lien is recorded and are preferred to all unrecorded liens, mortgages, and other encumbrances. The amount secured by any lien having priority to the lien filed pursuant to this section may not be increased without prior approval of the commissioner.
- (8) The commissioner shall file a release of the lien upon proof of complete performance of all obligations to residents pursuant to life care contracts.
- (9) The commissioner may subordinate any lien filed pursuant to this section to the lien of a first mortgage or other long-term financing obtained by the provider, regardless of the time at which the subsequent lien attaches.

HISTORY: Source: L. 81: Entire article R&RE, p. 685, § 1, effective July 1.L. 92: (1) amended, p. 1610, § 156, effective May 20.

Editor's note: This section is similar to former § 12-13-112 as it existed prior to 1981.

12-13-107. Reserve requirements

- (1) Any provider shall maintain reserves covering obligations under all life care agreements. The reserves shall be equivalent to the sum of the following:
- (a) (I) For those debt obligations that are collateralized by the provider's facility and that require a balloon payment, the amount of interest due and payable or accrued in the next eighteen months.
- (II) For purposes of this paragraph (a), any amounts held in reserve or escrow to fulfill debt agreements shall be considered eligible to meet the requirements of this paragraph (a).
- (b) (I) For all other debt obligations that are collateralized by the provider's facility, an amount equal to the next twelve months' principal and interest.
- (II) For purposes of this paragraph (b), any amounts held in reserve or escrow to fulfill debt agreements shall be considered eligible to meet the requirements of this paragraph (b).
- (c) (I) An amount not less than twenty percent of the facility's operating expenses for the immediately preceding year.
- (II) For purposes of this paragraph (c), "operating expenses":
- (A) Includes all expenses of the facility, except interest included in paragraphs (a) and (b) of this subsection (1) and depreciation or amortization expenses; and
- (B) Means budgeted expenses pursuant to a budget approved by the governing board of the provider, for providers in operation less than twelve months.
- (2) The reserves shall consist of the following:
- (a) Savings accounts or certificates of deposit in state or national banks located in this state which are members of the federal deposit insurance corporation or any successor agency thereto;

- (b) Savings accounts or savings certificates in state or federal savings or loan associations located in this state which are members of the federal deposit insurance corporation or any successor agency thereto;
- (c) Notes receivable from residents to the extent of the portion due and payable within twelve months;
- (d) Bonds and stocks selected from an approved list, as determined by the commissioner. If stocks, bonds, and securities that are not on the approved list are part of the reserves, and if they are to be retained as part of the reserves, it shall not be necessary that such unapproved stocks, bonds, and securities be disposed of immediately, but they shall be disposed of in accordance with rules promulgated pursuant to this article, which disposal shall be accomplished in a gradual manner so as to avoid loss to providers. Securities which, although not on the approved list, should be retained in the reserve for reasons acceptable to the commissioner may be retained with the specific approval of the commissioner. Investments in stocks and bonds will be valued at their fair market value.
- (e) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)
- (f) (I) Except as provided in subparagraph (II) of this paragraph (f), accounts receivable with respect to life care contracts that are:
- (A) Not considered past due by the provider if owed to the provider by a natural person;
- (B) Due from the United States or any agency thereof, any state in the United States or any agency thereof, or any institution, pension fund, or trust fund from which collection is reasonably assured.
- (II) Accounts receivable that are eligible under this paragraph (f) may be used to fulfill no more than fifty percent of the provider's total reserve requirement.
- (g) and (h) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)
- (i) Investment certificates or shares in open-end investment trusts whose management has been managing a mutual fund registered under the federal "Investment Company Act of 1940" or whose management has been registered as an investment adviser under the federal "Investment Advisers Act of 1940", and in either case currently has at least one hundred million dollars under its supervision, is qualified for sale in Colorado, has at least forty percent of its directors or trustees not affiliated with the fund's management company or principal underwriter or any of their affiliates, is registered under the federal "Investment Company Act of 1940", and is a fund listed as qualifying under rules maintained by the secretary of state in cooperation with the division of insurance.
- (3) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)
- (4) Any person or organization which entered into life care contracts prior to January 1, 1974, but which was not required prior to such date to obtain a license, is not required to maintain reserves covering obligations assumed under any such contract entered into prior to January 1, 1974.
- (5) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)

HISTORY: Source: L. 81: Entire article R&RE, p. 686, § 1, effective July 1.L. 92: (2)(a) and (2)(b) amended, p. 1610, § 157, effective May 20.L. 95: (1), (2)(c), (2)(e) to (2)(h), (3), and (5) amended, p. 150, § 1, effective April 7

Editor's note: This section is similar to former § 12-13-110 as it existed prior to 1981.

Cross references: For the "Investment Company Act of 1940", see 54 Stat. 789, codified at 15 U.S.C. § § 80a-1 to 80a-64; for the "Investment Advisors Act of 1940", see 54 Stat. 847, codified at 15 U.S.C. § § 80b-1 to 80b-21.

12-13-108. Annual report by providers - fee

- (1) Each provider shall file an annual report with the commissioner within ninety days after the end of its fiscal year that contains the certified financial statements for each facility and such other information as may be required by the commissioner. The annual report shall be made in a form prescribed by the commissioner.
- (2) A provider shall amend its annual report on file with the commissioner if an amendment is necessary to prevent the report from containing a material misstatement of fact or omission of a material fact.

- (3) A provider shall make its annual report available to residents upon request.
- (4) The failure to file an annual report within the time prescribed in subsection (1) of this section shall constitute a violation of this article.

HISTORY: Source: L. 81: Entire article R&RE, p. 687, § 1, effective July 1.L. 91: (1) amended, p. 1237, § 18, effective June 5.L. 92: Entire section amended, p. 1610, § 158, effective May 20.L. 2000: (1) amended, p. 156, § 4, effective August 2.L. 2005: (1) and (2) amended, p. 15, § 2, effective February 23.

12-13-109. Rehabilitation of provider. (Repealed)

HISTORY: Source: L. 81: Entire article R&RE, p. 688, § 1, effective July 1.L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

12-13-110. Examination - fees

The commissioner may conduct an examination of the affairs of any provider as often as the commissioner deems it necessary for the protection of the interests of the people of this state. Providers shall maintain copies of their books and records in Colorado to provide access for the purposes of this article. The commissioner shall assess each provider at least semiannually, to cover the annual direct and indirect costs of examinations, supervision, and administration conducted pursuant to the provisions of this section. Such assessments shall be calculated in terms of cents per thousand dollars of total escrowed entrance fees and reserves maintained. The assessment calculation, or ratio of the assessment charged to total escrowed entrance fees and reserves maintained, shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment. If deemed necessary, the commissioner may estimate a per diem rate to be charged for examinations and charge a provider for the actual cost of any examination documented by the commissioner.

HISTORY: Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1.L. 92: Entire section amended, p. 1611, § 159, effective May 20.L. 2005: Entire section amended, p. 15, § 3, effective February 23.

Editor's note: This section is similar to former § 12-13-103 as it existed prior to 1981.

12-13-111. Rules

The board may promulgate reasonable rules in accordance with article 4 of title 24, C.R.S., for effectuating any provision of this article.

HISTORY: Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1.L. 99: Entire section amended, p. 1015, § 10, effective August 4.

Editor's note: This section is similar to former § 12-13-103 as it existed prior to 1981.

12-13-112. Violation

Any person acting in the capacity of a provider who enters into a life care contract, or extends the term of an existing life care contract, without acting in compliance with the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

HISTORY: Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1.L. 92: Entire section amended, p. 1611, § 160, effective May 20.

Editor's note: This section is similar to former § 12-13-115 as it existed prior to 1981.

12-13-113. Article does not apply to facilities licensed by department of public health and environment

The provisions of this article shall not apply to any hospital or other facility that the department of public health and environment is authorized to license pursuant to part 1 of article 1 and part 1 of article 3 of title 25, C.R.S.; except that nursing care facilities and assisted living residences that are part of the facility of a provider as defined in section 12-13-101 shall be subject to the provisions of this article.

HISTORY: Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1.L. 94: Entire section amended, p. 2725, § 323, effective July 1.L. 2004: Entire section amended, p. 147, § 47, effective July 1.

12-13-114. Life care contract - content

- (1) Each life care contract shall be written in a clear and coherent manner using words with common and everyday meanings and shall:
- (a) Show the value of all property transferred, including but not limited to donations, subscriptions, fees, and any other amounts initially paid or payable by or on behalf of the prospective resident;
- (b) Show all the services which are to be provided by the provider to the prospective resident, including, in detail, all items which the prospective resident will receive, such as board, room, clothing, incidentals, medical care, transportation, and burial, and whether the items will be provided for a designated time period or for life and the monthly charge for such services;
- (c) Be accompanied by a financial statement showing in reasonable detail the financial condition of the provider, including a statement of earnings for the previous twenty-four-month period, or such shorter period if the facility has been in operation for a lesser period, which shall be furnished to the prospective resident;
- (d) Specify the monthly service fee and whether such fee is subject to adjustment;
- (e) Explicitly state what rights, if any, a resident will have to participate either individually or as part of a group of residents in management and financial decisions affecting the facility.
- (f) Repealed.
- (2) Repealed.

HISTORY: Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1.L. 92: (1)(f) and (2) repealed, p. 1611, § 161, effective May 20.

Editor's note: This section is similar to former § 12-13-106 as it existed prior to 1981.

12-13-115. Register

(1) Every provider shall	maintain a register	setting forth t	the following	facts concerning	each person	residing in	the
life care institution:							

- (a) Name;
- (b) Last previous address;
- (c) Age;
- (d) Nearest of kin, if any;
- (e) Mother's maiden name;

- (f) The person responsible for each resident's care and maintenance;
- (g) Such other data as the commissioner may reasonably require.

HISTORY: Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1.L. 92: Entire section amended, p. 1612, § 162, effective May 20.

Editor's note: This section is similar to former § 12-13-107 as it existed prior to 1981.

12-13-116. Advertisements and solicitations of life care contracts requirements

Any report, circular, public announcement, certificate, or financial statement, or any other printed matter or advertising material which is designed for or used to solicit or induce persons to enter into any life care contract, and which lists or refers to the name of any individual or organization as being interested in or connected with the person, association, or corporation to perform the contract, shall clearly state the extent of financial responsibility assumed by that individual or organization for the person, association, or corporation and the fulfillment of its contracts.

HISTORY: Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1.

Editor's note: This section is similar to former § 12-13-113 as it existed prior to 1981.

12-13-117. Injunction against violations - prosecution

- (1) The commissioner may bring an action, through the attorney general, to enjoin the threatened violation or continued violation of the provisions of this article or of any of the rules promulgated pursuant to this article, in the district court for the county in which the violation occurred or is about to occur. Any proceeding under the provisions of this section shall be subject to the Colorado rules of civil procedure; except that the commissioner shall not be required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or to show or tending to show irreparable damage or loss. The court may award the attorney general all costs incurred in bringing any action under this section.
- (2) Upon application by the commissioner, the attorney general or the district attorney of any judicial district in this state shall institute and prosecute an action for the criminal violation of any provision of this article.

HISTORY: Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1.L. 92: (1) amended, p. 1612, § 163, effective May 20.

Editor's note: This section is similar to former § 12-13-114 as it existed prior to 1981.

12-13-118. Local regulations

The provisions of this article shall not prevent local authorities of any county, city, town, or city and county, within the reasonable exercise of the police power, from adopting rules, by ordinance or resolution, prescribing standards of sanitation, health, and hygiene for facilities which are not in conflict with the provisions of this article or the rules adopted by the commissioner pursuant thereto, and requiring a local health permit for the maintenance or conduct of any such facility within such county, city, town, or city and county.

HISTORY: Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1.

Editor's note: This section is similar to former § 12-13-116 as it existed prior to 1981.

12-13-119. Name change not to affect rights or obligations. (Repealed)

HISTORY: Source: L. 81: Entire article R&RE, p. 692, § 1, effective July 1.L. 92: Entire section repealed, p. 1612, § 164, effective May 20.

Editor's note: This section was similar to former § 12-13-117 as it existed prior to 1981.